

Agency Description

The Office of the Secretary of State conducts its daily operations through a single program: the Business and Government Services Program. The agency receives its entire funding from one enterprise fund and one internal service fund.

Proprietary Rates

Program Description

The Office of the Secretary of State is established by Article VI, Section 1 of the Montana Constitution and its duties are set forth in 2-4-311 and 312, 2-6-203, and 2-15-401, MCA. The office files, maintains, stores, and distributes corporate documents, agricultural lien information, official records of the executive branch, and acts of the legislature. It publishes the Administrative Rules of Montana and the Montana Administrative Register. Additionally, the office administers the state agency records management function, as well as operates a central microfilm unit and the state records center. Because the Secretary of State is the chief election officer of the state, the office also interprets and applies election laws, with the exception of those pertaining to campaign finance. The Secretary of State also performs duties as a member of the Board of Examiners and the Board of Land Commissioners.

The Office of the Secretary of State administers two proprietary funds. The first, an internal service fund, receives revenue from fees charged to state agencies for managing agency records, and for publishing and distributing both the Administrative Rules of Montana (ARM) and the Montana Administrative Register (MAR). The second fund, an enterprise fund, receives revenues from fees charged to businesses and corporations for such services as corporate filings, registration of assumed business names and trademarks, and subscriptions to the ARM.

Report on Internal Service & Enterprise Funds, 2003 Biennium

Fund Number	Fund Name	Agency Number	Agency Name	Program Name
06556	Secretary of State Internal Service	3201	Secretary of State	

Fund Balance Information

	FY96	FY97	FY98	FY99	FY00	Estimated FY01	Estimated FY02	Estimated FY03
Beginning Retained Earnings	5,198	11,820	(33,404)	102,473	88,573	(48,909)	(95,241)	(120,468)
Increases								
Fee Revenue	458,040	454,495	454,560	497,402	480,184	394,875	418,500	407,350
Investment Earnings	-	-	-	-	-	-	-	-
Transfers In	-	-	-	-	-	-	-	-
Miscellaneous, operating	29,554	30,958	27,383	28,109	45,867	42,500	42,500	42,500
Miscellaneous, other	-	-	-	-	-	-	-	-
Total Increases	487,594	485,453	481,943	525,511	526,051	437,375	461,000	449,850
(Decreases)								
Personal Services	262,465	343,044	270,041	331,725	380,129	258,059	240,412	241,793
Operations	189,907	191,532	201,830	207,686	276,699	225,648	245,815	242,981
Transfers Out	-	-	-	-	-	-	-	-
Miscellaneous, operating	-	-	-	-	-	-	-	-
Miscellaneous, other	-	-	-	-	-	-	-	-
Total Decreases	452,372	534,576	471,871	539,411	656,828	483,707	486,227	484,774
Adjustments to Beginning Retained Earnings	(28,600)	3,899	125,805	-	(6,705)	-	-	-
Ending Retained Earnings	11,820	(33,404)	102,473	88,573	(48,909)	(95,241)	(120,468)	(155,392)
Total Contributed Capital	219,615	219,615	6,129	6,129	6,129	6,129	106,129	106,129
Total Fund Equity	231,435	186,211	108,602	94,702	(42,780)	(89,112)	(14,339)	(49,263)
Unreserved Fund Balance								
60 Days of Expenses (i.e. total of personnel services, operations, and miscellaneous operating divided by 6)	75,395	89,096	78,645	89,902	109,471	80,618	81,038	80,796

Fee/Rate Information for Legislative Action:

Requested Rates for Internal Service Funds	Various rates, that allow for continued support of the office, are requested and are currently published in ARMS or established by the Secretary of State's Office.
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Program Description - Secretary of State Internal Service (06556)

The Secretary of State's internal service fund supports the operation of the office records management functions as well as the publication and distribution of the ARM and the MAR.

Revenues and Expenses

The office estimates revenues totaling \$1,348,225 for a period including the current year and the 2003 biennium. Expenditures for this three-year period are estimated to be \$1,454,708. The "Report on Internal Service & Enterprise Funds, 2003 Biennium" for fund 06556 shows historical and projected revenues, expenses, retained earnings, and fund equity for the Secretary of State's internal service fund.

Rate Explanation

The Secretary of State's internal service fund supports the records management function; over 60 fees are charged to other state agencies. A variety of charges are established by the office, based on an annual review of the cost of microfilming and other factors. The fund supports roughly half of the administrative rules functions through fees charged to state agencies for publication and distribution of the Administrative Rules of Montana (ARM) and the Montana Administrative Register (MAR). The other half of the ARM functions provides ARM services to the public; these functions are funded with an enterprise fund, discussed separately. The Secretary of State, in consultation with the State Administration, Public Retirement Systems, and Veterans' Affairs Committee, sets fees for the ARM and MAR functions. State statute requires that fees charged by agencies receiving revenue from internal service funds be commensurate with costs.

Table 1 shows the fees and charges the Secretary of State proposes for the 2003 biennium.

Table 1
Secretary of State Proposed Internal Service Fees and Charges

Product or Service	2001 Biennium	2003 Biennium
1. Administrative Rules of Montana Fees		
a. Administrative Rules of Montana	\$350.00	\$350.00 per set
b. Quarterly updates of ARM	250.00	250.00 per year
c. Extra titles	50.00	50.00 per book
d. Quarterly updates of extra titles	50.00	50.00 per year per title
e. Montana Administrative Register	300.00	300.00 per subscription
f. Agency filing fee for pages of register publication	35.00	35.00 per page
g. Binders		5.00 per binder
h. Lapsed subscription fee ARM		50.00 per subscription
i. Lapsed subscription fee extra title		10.00 per title
j. Fax fee - 10 pages or less		3.00 first 10 pages
k. Fax fee - additional pages over 10 pages		0.25 per page
l. Research fee		12.00 per hour
m. Set cleanup fee		12.00 per hour
n. Missing page fee		0.50 per page up to cost of set
o. Rule edit fee		15.00 per hour
p. Late filling fee (less than 2 hours)		5.00 per occurrence
p. Late filling fee (2 hours to 4 hours)		10.00 per occurrence
p. Late filling fee (more than 4 hours)		25.00 per occurrence
2. Records Management Fees (based on 2-6-203, MCA)		
a. 16MM Microfilm		
Less than 250,000	30.00	30.00
Non-typical extreme weight & size	36.75	36.75
8" x 11"; 8" x 14" paperwork	25.00	25.00
8" x 11"; 8" x 14" computer printout	22.05	25.00
Extreme size & weight variance	27.50	30.00
Cards - fixed weight & color	15.00	15.00
Cards - mixed weight & color	25.00	25.00
b. 35MM Microfilm		
L (per 12" x 12") aerial photos	65.00	65.00
16" x 20" bound books	60.00	60.00
24" x 34" newspapers	110.00	114.00
24" x 34" bound newspapers	130.00	130.00
48" x 48" blueprints/maps	275.00	275.00
c. 105MM Microfilm		
8" x 11" paperwork	65.00	65.00
8" x 11"; 8" x 14" computer printout	73.50	73.50
Cards (per 1000)	73.50	73.50
Minimum filing charge	37.50	37.50
d. Film Processing		
16mm, 100 foot roll	3.45	3.45
16mm, 215 foot roll	6.76	6.76
35mm, 100 foot roll	6.05	6.05
16mm, 3M cartridges	4.50	4.50

Table 1 (Continued)			
Secretary of State Proposed Internal Service Fees and Charges			
Product or Service	2001 Biennium	2003 Biennium	
e. Film Inspecting			
100 foot roll inspection	3.50	3.50	per roll
215 foot roll inspection	4.98	4.98	per roll
Film splicing	0.75	0.75	
3M cartridge loading	2.25	2.25	
f. Duplication			
16mm, 100 foot roll	6.48	6.48	per roll
16mm, 215 foot roll	12.41	12.41	per roll
35mm, 100 foot roll	8.77	8.77	per roll
105mm, microfiche or jackets	0.15	0.15	
Reader/printer copies	0.50	0.50	
Photocopies/own labor	0.10	0.10	
Photocopies/our labor	0.50	0.50	
16mm, 100 foot roll	9.45	9.45	per roll
35mm, 100 foot roll	13.85	13.85	per roll
g. Jacket Loading			
16mm, 5 channel jacket	0.30	0.30	
Agency's own jacket	0.275	0.275	
35mm, 1 & 2 channel jacket	0.30	0.30	
Loading 16mm aperture card	0.25	0.25	
Jacket title	0.25	0.25	
Jacket notching	0.05	0.05	
h. Miscellaneous			
Fiche title	0.25	0.25	per title
Indexing and document prep/hour	14.00	16.00	per hour
Camera rental	95.00	75.00	per day
i. Supplies			
NMI reader bulbs	10.75	10.00	per bulb
16mm, 100 foot roll film	6.68	6.00	per roll
16mm, 215 foot roll film	12.95	12.95	per roll
35mm, 100 foot roll film	12.95	13.95	per roll
j. Records Center Services			
Storage	0.19	0.19	per square foot per month
Storage	0.295	0.295	per cubic foot per month
Retrievals	1.00	1.00	per occurrence
Emergency retrievals	5.00	5.00	per occurrence
Large retrievals, delivery, interfiling	16.00	18.00	per occurrence
Records disposal	16.00	18.00	per hour
Shredding confidential records	21.95	21.95	per hour
k. Records Center Boxes			
Records storage boxes: standard size A	1.34	1.34	per box
Drawing & map storage boxes size C	1.34	1.34	per box
l. Imaging Services			
Imaging		0.06	per image
Indexing and document preparation		18.00	per hour

**LFD
ISSUE**

Operating revenues have increased by \$38,457 from fiscal 1996 to fiscal 2000. During this same period, operating expenses have increased by \$204,456. The imbalance between operating revenues and operating expenses has resulted in a depletion in fund equity, from \$231,435 in fiscal 1996 to a negative \$42,780 in fiscal 2000. The office is projecting that this trend will continue, given that operating expenses are estimated at \$106,483 more than operating revenues for the three-year period from fiscal 2001 through fiscal 2003. The “Report on Internal Service & Enterprise Funds, 2003 Biennium” for the internal service fund (fund number 06556) shows historical and projected revenues, expenses, retained earnings, and fund equity. A review of the fund financial affairs has revealed two problems: 1) revenues are not adequate to support present law expenditures; and 2) revenues from other service offerings subsidize functions that should be funded with the Secretary of State’s internal service fund.

Fund Structure Stability

If the imbalance between revenues and expenses comes to fruition, the fund equity will become increasingly more negative unless there is: 1) a decrease in expenses; 2) an increase in revenue; or 3) a combination of lower expenses and higher revenues. To support the operations of the records management and the ARM functions funded by the internal service fund, capital has been infused from the enterprise fund. (Subsidies by the enterprise fund are discussed below.)

*Options for Addressing the Fund Structure Stability Issue*Approve Maximum Fees and Charges and Minimum Fund Equity

The legislature may wish to take action to address the structural stability of the fund. Under current law, the primary avenue available for intervention is to approve rates for services funded by the internal service fund. To this end, the legislature may wish to:

- ?? Direct the office to provide documentation, including assumptions of revenues and expenses, of the data used to develop the internal service rates.
- ?? Direct the office to propose a rate structure that would maintain a viable and self-supporting fund equity.
- ?? Establish and document in language contained in the general appropriations bill or, preferably, in substantive law a minimum fund equity balance for the internal service fund. This would force management of fund expenses at levels more closely reflecting fund revenues.
- ?? Approve rates that would provide the revenues necessary to maintain the fund at levels above the minimum balance determined for the fund.

Fund ARM to Agencies and Records Management with General Fund or State Special Revenue

An alternate approach is available to the legislature in terms of addressing internal service fund stability. Services currently funded by the internal service fund could be moved to an alternate funding source. By funding these services with an appropriation of general fund or state special revenue fund, the legislature could provide policy direction for expenditures made by the office. The costs for records management and the ARM functions provided to state agencies could be included in the state indirect cost recovery plan, Section 17-1-510, MCA. Expenditures of general fund could be allocated to agencies funded with federal funds through the Statewide Cost Allocation Plan (SWCAP), as well as to state-funded agencies through the State Fund Cost Allocation Plan (SFCAP). Alternatively, state special revenue costs could be allocated to agencies through fixed cost allocations. If funding for the portion of ARM currently funded by the internal service fund and for records management functions are shifted to the general fund or to a state special revenue fund, an appropriation at base year actual expenses would be roughly \$650,000 per year. Based on budget adjustments provided by the office, appropriations of \$484,139 for fiscal 2002 and \$482,558 for fiscal 2003 would be needed to fund the portion of the program currently funded with the internal service fund.

**LFD ISSUE
(Continued)**Treat ARM Separately – Fund with State Special Revenue

ARM functions are provided to the public and to other government entities, and are funded with enterprise and internal service funds. According to Section 17-2-102, MCA, the enterprise fund type accounts for operations when goods and services are provided to the general public. Likewise, the internal service fund type accounts for operations when one department or agency provides goods and services to other state government departments or agencies or to other government entities.

These definitions provide a natural conflict for the administration of the ARM functions. Because of this conflict, the operations of the ARM functions should be accounted for as one business function, held separately from other functions of the office. If this were done, accounting for the ARM functions with a state special revenue account would appear to be appropriate. Prior to fiscal 1994, state special revenue was used to account for the ARM functions. However, HB 549 of the 1993 legislature changed the source of funding from state special revenue to proprietary funding. This change appears to have resulted in more accounting problems than anticipated. For example, financial compliance audits consistently find that fees and charges are not commensurate with costs, and therefore are not in compliance with Section 17-8-101, MCA. The enterprise fund paid by non-government entities subsidizes the operations of the portion of the fund that services government entities.

General Fund Capital Contribution

If the legislature does not wish to address the financial condition of the fund through rate increases, by establishing a minimum fund balance, or through alternate funding, it may wish to provide a one-time capital contribution. This contribution – perhaps from the general fund – could be added to raise the fund equity balance to a level that would generate less reliance on support from the enterprise fund. A discussion of enterprise fund support of the internal service fund follows.

Enterprise Fund Subsidizing the Internal service fund

As stated earlier, the revenues for services provided by the internal service fund are inadequate to cover the costs of the services provided. To meet expenses associated with the records management functions and publication and distribution of the ARM and the MAR, interest-free loans have been made and capital contributed by the enterprise fund to the internal service fund. When a loan is made between separate accounting entities, there is an expectation that the loan will be repaid. This expectation is not apparent from a review of the internal service fund financial statements. By definition, contributed capital implies no intention to repay. When capital is contributed from an enterprise fund, those paying the fees for the services supported by the enterprise fund subsidize the fees paid by those purchasing the services from the internal service fund.

The legislature may wish to change substantive law to clarify the intent of the legislature relative to subsidizing the operations of any funds using revenues from another fund, unless certain conditions are met. The legislature could provide policy direction to identify the conditions under which a contribution could be provided. It could also forbid the practice, thereby forcing agencies to manage the financial affairs of their programs when providing goods or services

Program Description: Secretary of State Enterprise Fund (06053)

The Secretary of State's enterprise fund is used to account for costs and revenues received from fees charged to businesses and corporations for corporate filings, registration of assumed business names and trademarks, and half of the operation of the ARM functions of the office. The enterprise fund is also used to account for costs associated with the Secretary of State's duties as the chief election officer of the state and as a member of the Board of Examiners and the Board of Land Commissioners.

Revenues and Expenditures

The "Report on Internal Service & Enterprise Funds, 2003 Biennium" for fund 06053 shows historical and projected revenues, expenses, retained earnings, and fund equity for the Secretary of State's enterprise fund.

Report on Internal Service & Enterprise Funds, 2003 Biennium

Fund Number	Fund Name	Agency Number	Agency Name	Program Name
06053	Secretary of State Business Services	3201	Secretary of State	

Fund Balance Information

	FY96	FY97	FY98	FY99	FY00	Estimated FY01	Estimated FY02	Estimated FY03
Beginning Retained Earnings	338,038	416,089	753,945	1,056,379	956,043	930,368	561,215	598,333
Increases								
Fee Revenue	1,742,615	1,824,747	1,975,218	2,014,400	2,270,142	1,992,468	2,584,000	2,580,000
Investment Earnings	-	-	-	-	47,253	20,000	60,000	40,000
Transfers In	-	-	-	-	-	-	-	-
Miscellaneous, operating	46,228	3,633	2,964	25,502	5,094	2,815	4,000	4,000
Miscellaneous, other	-	-	-	-	-	-	-	-
Total Increases	1,788,843	1,828,380	1,978,182	2,039,902	2,322,489	2,015,283	2,648,000	2,624,000
(Decreases)								
Personal Services	938,114	903,728	1,001,344	1,097,045	1,116,944	1,285,136	1,241,491	1,248,981
Operations	708,086	610,322	790,400	1,043,863	1,231,246	1,099,300	1,269,391	1,255,114
Transfers Out	-	-	-	-	-	-	-	-
Miscellaneous, operating	-	-	-	-	-	-	-	-
Miscellaneous, other	-	-	-	-	-	-	100,000	100,000
Total Decreases	1,646,200	1,514,050	1,791,744	2,140,908	2,348,190	2,384,436	2,610,882	2,604,095
Adjustments to Beginning Retained Earnings	(64,592)	23,526	115,996	670	26	-	-	-
Ending Retained Earnings	416,089	753,945	1,056,379	956,043	930,368	561,215	598,333	618,238
Total Contributed Capital	175,825	175,825	-	-	-	-	-	-
Total Fund Equity	591,914	929,770	1,056,379	956,043	930,368	561,215	598,333	618,238
Unreserved Fund Balance								
60 Days of Expenses (i.e. total of personnel services, operations, and miscellaneous operating divided by 6)	274,367	252,342	298,624	356,818	391,365	397,406	418,480	417,349

Agency Charges (Information only, since this is an Enterprise Fund)

Various rates are currently published in ARMS or established by the Secretary of State's Office, that allow for continued support of the office.

-----Estimated-----

Authority

Rate Explanation

License fees for domestic and foreign corporations are set in Section 35-1-1207, MCA. The Secretary of State sets other fees, which are deposited in the enterprise fund. With the exception of the ARM-related fees, these fees are not approved by the legislature. ARM fees are approved by the legislature because they provide revenue to the internal service fund discussed above.

**LFD
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Fees Commensurate with Cost

General Government Duties

The Secretary of State's enterprise fund is used to account for the costs associated with the duties of the Secretary of State as the chief election officer of the state, and as a member of the Board of Examiners and the Board of Land Commissioners. These duties do not directly support the domestic and foreign corporations for which the fee is paid, but are related to the general operation of state government. Thus, those paying fees into the enterprise fund are subsidizing duties from which they receive no direct benefit or commensurate service.

The legislature may wish to use the general fund to finance the functions performed by the Secretary of State that are more pertinent to the general government duties of the position.. The general government duties of the position accounted for \$55,382 of the Secretary of State's office expenses during the base year.

Subsidizing Other Funds

Subsidizing the Secretary of State's internal service fund with capital contributions and interest-free loans from the enterprise fund generates conflicts with the statutes requiring that costs be commensurate with services. The legislature could eliminate this practice by inserting language in substantive law that disallows such subsidies. If the legislature wanted to allow the practice under certain conditions, those conditions could be identified.

NP 1 - Purchase Computer Equipment and Software - This request would fund the acquisition of computer hardware and software including: 1) a file server; and 2) an Internet server. This request would also fund the purchase of software to manage public access to the Administrative Rules of Montana (ARM).

Rate Impact

This request is funded entirely with enterprise funds and would have no impact on the rates the legislature approves.

**LFD
ISSUE**

Funding for this request comes entirely from the Secretary of State's enterprise fund. The office has stated that the equipment and software would be used to manage public access to ARM. In this case, the "public" also pertains to government entities served by the ARM functions of the office. Using enterprise funds to finance the purchase of equipment and software that would benefit the operations of both funds is another instance in which enterprise fund fees subsidize fees for the internal service fund. During the base year, 55 percent of ARM expenses were funded with the internal service fund. This means that nearly half of this request should be funded with the internal service fund. The legislature may wish to request that the office justify funding this request entirely with the enterprise fund would not, in fact, mean providing a subsidy for the internal service fund portion of the ARM function. If it is determined that this request should be funded partially with the internal service fund, the legislature may request the office provide a schedule of rates for the internal service fund that factors in the impacts of this request.